

Date of Decision : 20th June, 1996.

Special Civil Application No.2913 of 1982

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For Approval and Signature

The Honourable Mr.Justice S.K. KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr.H.M. Mehta, Advocate, for the petitioner.

Mr.K.S. Nanavati, Advocate, for the respondents.

Coram : S.K. KESHOTE, J.

( 20th June, 1996 )

Oral Judgment :-

Heard learned counsel for the parties. The petitioner filed this Special Civil Application, challenging the order of the Labour Court, Surat, dated

15th of February, 1982. During the pendency of this Special Civil Application, the petitioner expired and under the orders of this Court, dated 29th of November, 1995, made in C.A. No.2855 of 1995, his legal heirs were ordered to be impleaded as petitioners.

The petitioner, since dead, who was a Mechanical Engineer, was appointed as Shift Engineer with effect from 7.11.1967 in the establishment of the respondent Co-operative Society. Thereafter, he was promoted to the post of Deputy Chief Engineer and has also been made the In-charge Chief Engineer under the order dated 2.8.1976. The petitioner's services were brought to an end on 22nd of June, 1979, which led to the petitioner to approach the Labour Court, but his application was rejected on the ground that the same has not been filed within the prescribed period and other formalities, as required to be followed under the provisions of the Bombay Industrial Relations Act, 1946, were not complied with. During the course of the argument, a question has cropped up whether the petitioner, who was holding the post of Chief Engineer and the post of Deputy Chief Engineer in substantive capacity, should be considered as a 'workman' or not. But, looking to the fact that the matter has not been decided by the Labour Court on this ground, I do not consider it to be appropriate to go into the merits of this point.

In reply to the writ petition, the respondents have come up with a case that the petitioner was gainfully employed elsewhere. The name of the employer, where he was gainfully employed, has also been given, i.e. Bardoli Sugar Factory. It has also been stated in the reply by the respondents that the said employer had also allotted to the petitioner a residential quarter and he was staying with his family therein. The respondents have further stated that the petitioner was getting more emoluments than what he was getting in the employment of the respondent. A point has also been urged by the respondents that the Application filed by the petitioner before the Labour Court as well as this Special civil Application filed before this Court is merely by way of a point of prestige and not for ventilating any real grievance. These averments made by the respondents in reply to the Special Civil Application stand uncontroverted. The petitioner, since deceased, was an Engineer and as such when he was elsewhere gainfully employed, I fail to see any justification to decide the matter on merits and remand the same to the Labour Court. The petitioner, during the pendency of these proceedings, had also expired. No useful purpose would be served by

deciding this matter on merits. The petitioner, in fact, has not suffered any loss whatsoever and nothing remains on substance and I find sufficient merits in the contention of the respondents that it is rather a matter of prestige. In the reply, another fact has been stated by the respondents that the petitioner had filed an application before the Registrar's Nominee, in which he claimed Rs.2,11,454/- as damages for loss of employment. This is yet another factor, which justifies the rejection of this Special Civil Application.

In the result, this Special Civil Application is dismissed. Rule is discharged. Ad interim relief granted by this Court stands vacated.

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(apj)